

## THE UNIVERSITY OF DENVER RETIREMENT PLAN

THIS INDENTURE made on the 13<sup>th</sup> day of November, 2014, by Colorado Seminary, operating as University of Denver (the "Primary Sponsor");

### WITNESSETH:

WHEREAS, the Primary Sponsor previously established the University of Denver Retirement Plan (the "Plan"); and

WHEREAS, the Plan is intended to be a plan described in Section 403(b) of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, the Primary Sponsor now wishes to amend and restate the Plan;

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NOW, THEREFORE, the Primary Sponsor does hereby amend and restate the Plan, effective as of January 1, 2015, to read as follows:

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## INTRODUCTION

The terms and conditions contained in the Funding Vehicle are hereby incorporated by reference, excluding those terms that are inconsistent with the terms of the Plan or Code Section 403(b).

### SECTION 1 DEFINITIONS

Wherever used herein, the masculine pronoun shall be deemed to include the feminine, and the singular to include the plural, unless the context clearly indicates otherwise, and the following words and phrases shall, when used herein, have the meanings set forth below:

1.1 “Account” means the account established by the Plan Administrator to reflect the interest of a Participant in the Fund. In addition to any other accounts as the Plan Administrator may establish, the Plan Administrator shall establish separate accounts (each of which shall be adjusted pursuant to the Plan to reflect income, gains, losses and other credits or charges attributable thereto) for each Participant, to be designated as follows:

(a) “Deferral Account” which shall reflect a Participant’s interest in Deferral Amounts made by a Plan Sponsor under Plan Section 3.1 other than the Designated Roth Contributions.

(b) “Matching Account” which shall reflect a Participant’s interest in Matching Contributions made by a Plan Sponsor under Section 3.2.

(c) “Mandatory Contribution Account” which shall reflect a Participant’s interest in the contributions made under Section 3.3.

(d) “Designated Roth Contribution Account” which shall reflect a Participant’s interest in the Designated Roth Contributions made under Section 3.1(a).

(e) “Rollover Account” which shall reflect a Participant’s interest in the Rollover Amounts contributed under Section 3.5.

1.2 “Accumulated Benefit” means the balance of a Participant’s Account.

1.3 “Affiliate” means (a) any corporation which is a member of the same controlled group of corporations (within the meaning of Code Section 414(b)) as is a Plan Sponsor, (b) any other trade or business (whether or not incorporated) under common control (within the meaning of Code Section 414(c)) with a Plan Sponsor, (c) any other corporation, partnership, or other organization which is a member of an affiliated service group (within the meaning of Code Section 414(m)) with a Plan Sponsor, and (d) any other entity required to be aggregated with a Plan Sponsor pursuant to regulations under Code Section 414(o). For purposes of determining when entities are treated as the same employer under Code Sections 414(b), (c), (m), and (o), the rules set forth under Treasury Regulations Section 1.414(c)-5 will apply.

1.4 “Annual Compensation” means the amount paid to an Employee by a Plan Sponsor (and Affiliates for purposes of Appendix A) during a Plan Year as compensation that would be subject to income tax withholding under Code Section 3401(a) (but without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed), and any amount contributed or deferred by a Plan Sponsor at the election of an Employee which is not includable in

the gross income of the Employee under Code Sections 125 (including any amounts not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that he or she has other health coverage; an amount will be treated as an amount under Section 125 of the Code only if the Plan Sponsor or Affiliate does not request or collect information regarding the Employee's other health coverage as part of the enrollment process for the health plan), 132(f)(4), or 402(g)(3), the sum of which amounts shall not exceed \$265,000 (for the Plan Year beginning in 2015), which \$265,000 shall be adjusted for changes in the cost of living as provided in regulations issued by the Secretary of the Treasury. Annual Compensation shall also include back pay (within the meaning of Treasury Regulation Section 1.415(c)-2(g)(8)), which shall be treated as Annual Compensation for the year to which it relates. Notwithstanding the above:

(a) for purposes of determining with respect to each Plan Sponsor the amount of contributions under Plan Section 3 and allocations under Plan Section 4 made by or on behalf of an Employee, and

(b) for purposes of applying the provisions of Appendix A hereto,

Annual Compensation shall only include amounts received from that Plan Sponsor for the portion of the Plan Year during which the Employee was a Participant. Annual Compensation shall also include any amount paid by the later of two and one-half (2½) months after an Employee's severance from employment with the Plan Sponsor or the last day of the Plan Year which includes the date of the Employee's severance from employment with the Plan Sponsor, if the payment is regular compensation for services during the Employee's regular working hours (such as shift differential), commissions, or other similar payments and, absent a severance from employment, the payment would have been paid to the Employee while the Employee continued in employment with the Plan Sponsor (or Affiliate). Any payment paid after severance from employment and not described in the foregoing sentence (including severance payments) shall not be considered Annual Compensation.

Annual Compensation shall exclude reimbursements or other expense allowances, fringe benefits (cash and non-cash), moving expenses, deferred compensation (except as otherwise provided above), welfare benefits, bonuses and overtime payments.

For purposes of determining contributions under Section 3 of the Plan and allocations under Section 4 of the Plan, Annual Compensation shall exclude payments for unused leave and amounts deferred or contributed to or distributed from a plan sponsored by the Plan Sponsor and described under Code Section 457.

For purposes of Appendix B, Participants receiving contributions under Section 3.3 of the Plan will be deemed to have monthly Annual Compensation for the period through the end of the taxable year of the Participant in which the Participant ceases to be an employee of the Plan Sponsor and through the end of the next five taxable years. The amount of the monthly Annual Compensation will be equal to 1/12<sup>th</sup> of the Participant's Annual Compensation during the Participant's most recent year of service with the Plan Sponsor (as determined pursuant to Treasury Regulations Sections 1.403(b)-4(d)). Furthermore, for purposes of Appendix B, Participants receiving contributions under Section 3.3 of the Plan who are permanently and totally disabled (as defined in Code Section 22(e)(3)) and who were non-Highly Compensated Employees immediately before becoming disabled will be deemed to have Annual Compensation equal to the Annual Compensation the Participant would have received for the year if the Participant were paid at the same rate as applied immediately prior to disability (if such deemed compensation is greater than actual Annual Compensation as determined without regard to this sentence).

1.5 "Appointed Employee" means those Employees hired for positions that: (1) last at least six months; (2) are scheduled for at least 20 hours per week; and (3) have a funded line item in the budget.



1.6 “Beneficiary” means the person or trust that a Participant designated most recently in writing to the Plan Administrator. However, upon the Participant’s divorce if the former spouse was designated as the Participant’s beneficiary, that designation shall become null and void. If the Participant has failed to make a designation, no person designated is alive, no trust has been established, or no successor Beneficiary has been designated who is alive, the term “Beneficiary” means (a) the Participant’s spouse, or (b), if no spouse is alive, the legal representative of the deceased Participant’s estate. Notwithstanding the foregoing, the spouse of a married Participant shall be his Beneficiary unless that spouse has consented in writing to the designation by the Participant of some other person or trust and the spouse’s consent acknowledges the effect of the designation and is witnessed by a notary public. A Participant may change his designation at any time. However, a Participant may not change his designation without further consent of his spouse under the terms of the preceding sentence unless the spouse’s consent permits designation of another person or trust without further spousal consent and acknowledges that the spouse has the right to limit consent to a specific beneficiary and that the spouse voluntarily relinquishes this right. Notwithstanding the above, the spouse’s consent shall not be required if the Participant establishes to the satisfaction of the Plan Administrator that the spouse can not be located, if the Participant has a court order indicating that he is legally separated or has been abandoned (within the meaning of local law) unless a “qualified domestic relations order” (as defined in Code Section 414(p)) provides otherwise, or if there are other circumstances as the Secretary of the Treasury prescribes. If the spouse is legally incompetent to give consent, consent by the spouse’s legal guardian shall be deemed to be consent by the spouse.

1.7 “Board of Trustees” means the Board of Trustees of the Primary Sponsor.

1.8 “Catch-up Contributions” means the additional Elective Deferrals that a Participant may make pursuant to Section 3.1(c) of the Plan, beyond the dollar limitation set forth under Section 3.1(b), Appendix A, or Appendix B of the Plan.

1.9 “Code” means the Internal Revenue Code of 1986, as amended.

1.10 “Custodian” means TIAA-CREF, MetLife, or any successor thereto.

1.11 “Deferral Amount” means a contribution of a Plan Sponsor on behalf of a Participant pursuant to Plan Section 3.1.

1.12 “Designated Roth Contribution” means a salary deferral contribution that the Participant irrevocably elects to designate, at the time he or she makes an election in accordance with Section 3.1(a), as a Designated Roth Contribution, in lieu of all or a portion of the contribution the Participant is otherwise eligible to make on a pre-tax basis under Section 3.1(a). Designated Roth Contributions are treated by the Plan Sponsor as includible in the Participant’s income at the time the Participant would otherwise have received the amount in cash, but for the Participant’s election hereunder.

1.13 “Disability” means the definition of disability under the long-term disability program maintained by the Plan Sponsor.

1.14 “Elective Deferrals” means, with respect to any taxable year of the Participant, the sum of

(a) any Deferral Amounts;

(b) any contributions made by or on behalf of a Participant under any other qualified cash or deferred arrangement as defined in Code Section 401(k), whether or not maintained by a Plan

Sponsor, to the extent such contributions are not or would not, but for Code Section 402(g)(1), be included in the Participant's gross income for the taxable year; and

(c) any other contributions made by or on behalf of a Participant pursuant to Code Section 402(g)(3).

1.15 "Eligible Employee" means any Employee of a Plan Sponsor other than an Employee who is a Leased Employee, a nonresident alien who does not receive any earned income from the Plan Sponsor which constitutes United States source income and any Employee covered under a collective bargaining agreement between a union and a plan sponsor, provided that retirement benefits were the subject of good faith bargaining, unless the collective bargaining agreement provides for participation in the Plan. The Plan Administrator shall have the sole discretionary authority to determine whether an individual is an Eligible Employee and all determinations shall be final and binding. Any person classified by the Plan Administrator as an independent contractor, consultant, or other designation which would exclude the person from being considered as an Employee under the Plan Sponsor's customary worker classification procedures (whether or not the individual is actually an Employee) shall, during any period, be excluded from the definitions of "Eligible Employee", regardless of the person's classification for the period by the Internal Revenue Service for tax withholding purposes.

1.16 "Eligible Employer" shall mean any Code Section 170(b)(1)(A)(ii) educational institution.

1.17 "Employee" means any person who is employed by a Plan Sponsor or an Affiliate for purposes of the Federal Insurance Contributions Act, is a Leased Employee with respect to a Plan Sponsor or Affiliate, or is deemed to be an employee of a Plan Sponsor or Affiliate pursuant to regulations under Code section 414(o).

1.18 "Entry Date" means the first day of the month following the date the Employee has met the requirements set forth in Section 2.

1.19 "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

1.20 "Fiduciary" means each Named Fiduciary and any other person who exercises or has any discretionary authority or control regarding management or administration of the Plan, any other person who renders investment advice for a fee or has any authority or responsibility to do so with respect to any assets of the Plan, or any other person who exercises or has any authority or control respecting management or disposition of assets of the Plan.

1.21 "Fund" means the amount at any given time of cash and other property held by the Custodian pursuant to the Plan.

1.22 "Funding Vehicle" means the annuity contracts or custodial accounts that satisfy the requirements of Code Section 401(f) issued for funding accrued benefits under this Plan.

1.23 (a) "Highly Compensated Employee" means an Employee who:

(1) was at any time during the Plan Year (the "Determination Year") or the twelve-month period immediately preceding the Plan Year (the "Lookback Year") an owner of more than five percent (5%) of the outstanding stock of a Plan Sponsor or Affiliate or more than five percent (5%) of the total combined voting power of all stock of a Plan Sponsor or Affiliate; or

(2) for the Lookback Year received Annual Compensation in excess of \$115,000 (for 2013), which amount shall be adjusted for changes in the cost of living as provided in regulations issued by the Secretary of the Treasury, and

(b) For purposes of this Section, a former Employee shall be treated as a Highly Compensated Employee if (1) the former Employee was a Highly Compensated Employee (as defined at that time under the Plan) at the time the former Employee separated from service with the Plan Sponsor or Affiliate or (2) the former Employee was a Highly Compensated Employee (as defined at that time under the Plan) at any time after the former Employee attained age 55.

(c) For purposes of this Section, Employees who are nonresident aliens and who receive no earned income from the Plan Sponsor or an Affiliate from sources within the United States shall not be treated as Employees.

(d) For purposes of this Section, Annual Compensation shall include amounts paid by Affiliates and shall be determined without regard to the \$265,000 (for 2015) limitation, as adjusted.

1.24 “Hour of Service” means:

(a) Each hour for which an Employee is paid, or entitled to payment, for the performance of duties for a Plan Sponsor or any Affiliate during the applicable computation period, and such hours shall be credited to the computation period in which the duties are performed.

(b) Each hour for which an Employee is paid, or entitled to payment, by a Plan Sponsor or any Affiliate on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty, or leave of absence and each hour for which back pay is awarded or agreed to, irrespective of mitigation of damages; provided that hours of service shall not be credited by reason of payment of unemployment or worker’s compensation or by reason of reimbursement for medical expenses.

(c) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by a Plan Sponsor or any Affiliate, and such hours shall be credited to the computation period or periods to which the award or agreement for back pay pertains rather than to the computation period in which the award, agreement, or payment is made; provided that the crediting of Hours of Service for back pay awarded or agreed to with respect to periods described in Subsection (b) of this Section shall be subject to the limitation set forth in Subsection (e).

(d) The Plan Administrator shall determine Hours of Service from the employment records of a Plan Sponsor or in any other manner consistent with regulations promulgated by the Secretary of Labor, shall credit Hours of Service in accordance with the provisions of Section 2530.200b-2(b) and (c) of the U.S. Department of Labor Regulations or such other federal regulations as may from time to time be applicable, and shall construe any ambiguities in favor of crediting Employees with Hours of Service.

(e) If a Plan Sponsor or an Affiliate acquires substantially all of the assets of another corporation or entity or a controlling interest in the stock of another corporation or merges with another corporation or entity and is the surviving entity, then service of an Employee who was employed by the prior corporation or entity and who is employed by the Plan Sponsor or an Affiliate at the time of the acquisition or merger shall be counted in the manner provided, with the consent of

the Primary Sponsor, in resolutions adopted by the Plan Sponsor authorizing the counting of such service and otherwise consistent with applicable Treasury regulations.

1.25 “Leased Employee” means any person (other than an employee of the Plan Sponsor) who pursuant to an agreement between the Plan Sponsor and any other person has performed services for the Plan Sponsor (or for the Plan Sponsor and related persons) on a substantially full-time basis for a period of at least one (1) year, and the services are performed under the primary direction or control by the Plan Sponsor.

1.26 “Leave of Absence” shall mean any absence from work for service in the in the armed forces of the United States, or an absence of not over 12 months approved by the Plan Sponsor in accordance with reasonable nondiscriminatory standards and policies consistently applied by the Plan Sponsor.

1.27 “Matching Contribution” means the contributions described in Section 3.2.

1.28 “Named Fiduciary” means the Plan Administrator, the Custodian, and the Board of Trustees.

1.29 “Normal Retirement Age” means age 65.

1.30 “One-Year-Period of Severance” shall mean a 12-consecutive-month period, beginning on an Employee’s Severance from Service Date during which the Employee does not perform services for the Plan Sponsor.

1.31 “Participant” means any Employee or former Employee who has become a participant in the Plan for so long as his vested Accumulated Benefit has not been fully distributed pursuant to the Plan.

1.32 “Plan Administrator” means the organization, person or persons designated to administer the Plan.

1.33 “Plan Sponsor” means the Primary Sponsor or any successor thereto and any Affiliate or other entity which has adopted the Plan.

1.34 “Plan Year” means the calendar year.

1.35 “Qualified Annuity Form of Payment” means:

(a) a single life annuity, payable in equal monthly installments, for the life of the Participant in the case of a Participant who is not married on the date payments to the Participant commence under the terms of the Plan,

(b) in the case of a Participant who is married on the date payments are to commence under the terms of the Plan, a joint and survivor annuity, payable in monthly installments, which is an annuity for the life of the Participant with a survivor annuity for the life of his spouse which is fifty percent (50%) of the amount of the annuity payable during the joint lives of the Participant and his spouse and which is the actuarial equivalent of a single life annuity for the life of the Participant, and

(c) in the case of a Participant who dies before payments are to commence under the terms of the Plan, a survivor benefit for the life of his spouse, if he is married at the date of his death and has been married to that spouse throughout the twelve (12) consecutive month period

immediately preceding his date of death, which is the actuarial equivalent of a single life annuity which would have been payable for the life of the Participant if:

(1) in the case of a Participant who dies after the date on which the Participant attains Normal Retirement Age, the Participant had retired with a Qualified Annuity Form of Payment on the date before his date of death, or

(2) in the case of a Participant who dies on or before the date on which the Participant would have attained Normal Retirement Age, the Participant had:

(A) separated from service on his date of death,

(B) survived to Normal Retirement Age,

(C) retired with a Qualified Annuity Form of Payment at Normal Retirement Age, and

(D) died on the day after the date on which he would have attained Normal Retirement Age.

The annuity may be provided through the Funding Vehicle or may be purchased from an insurance company designated by the Plan Administrator in writing to the Custodian, and may be distributed to the Participant or his spouse, as the case may be. The distribution, if any, shall be in full satisfaction of the benefits to which the Participant or his spouse is entitled under the Plan.

1.36 “Qualified Optional Survivor Annuity” means a joint and survivor annuity, payable in monthly installments, which is an immediate annuity for the life of the Participant with a survivor annuity for the life of his spouse which is seventy-five percent (75%) of the amount of the annuity payable during the joint lives of the Participant and his spouse and which is the actuarial equivalent of a single life annuity for the life of the Participant.

1.37 “Rollover Amount” means (a) any amount transferred to the Fund by a Participant, which amount qualifies as a rollover amount under (i) Code Section 402(c) or (ii) 408(d)(3)(A)(ii), to the extent the distribution is from an eligible retirement plan described in Code Section 402(c)(8)(B) and any regulations issued thereunder, including eligible rollover distributions attributable to Roth contributions made to another plan qualified under Code Section 403(b) or 401(a), and (b) any other amount transferred to the Fund on behalf of a Participant in (i) a trust-to-trust transfer from any plan meeting the requirements of Code Section 401(a) or (ii) a transfer from another Code Section 403(b) plan (to the extent permitted under the Funding Vehicle), and in all cases, excluding any employee after-tax contributions.

1.38 “Severance from Service Date” shall occur on the earlier of:

(a) a termination of employment or service on account of retirement, resignation, discharge or death,

(b) the first anniversary of the date the Employee terminated employment or service on account of any reason other than the reasons set forth above, such as vacation, holiday, sickness, disability, Leave of Absence or layoff, or

(c) the second anniversary of the of the first day of absence by reason of a maternity or paternity absence

1.39 “Tenure Relinquishment Employee” an Employee who formerly held a tenured faculty position with the Plan Sponsor and who, through the process of tenure relinquishment, no longer holds a tenured faculty position but remains an Employee of the Plan Sponsor.

1.40 “Valuation Date” means the last day of each Plan Year and any other day which the Plan Administrator declares to be a Valuation Date. The Plan Administrator may retroactively declare a day to be a Valuation Date if the Plan Administrator in its sole discretion deems that Valuation Date to be in the interest of Participants and Beneficiaries generally.

1.41 “Year of Service” shall mean, 12 months of service with the Plan Sponsor calculated in accordance with the following requirements:

(a) An Employee shall be credited with service beginning on the date the Employee first performs an Hour of Service.

(b) An Employee shall be credited with service until the Employee’s Severance from Service Date, unless the Employee is reemployed by the Employer within 12 months of the date the Employee retires, resigns or is discharged, in which case, the Employee will be treated as if he or she did not experience a Severance from Service Date.

(c) If an Employee who is absent from service for a reason other than retirement, resignation, discharge or death has a subsequent retirement, resignation, or discharge and within 12 months of the date of the initial absence, the Employee is then reemployed by the Plan Sponsor, the Employee will be treated as if he or she did not experience a Severance from Service Date.

(d) Service is measured in days and aggregated in full and fractional years, with 30 days equaling one month and 12 months equaling one year; provided however, that an Employee shall not receive multiple credit for service with respect to any single period.

(e) If an Employee has a One-Year Period of Severance or has a Severance from Service Date under Section 1.38(b), then is reemployed by the Plan Sponsor, a new period of service begins, which is aggregated with the Employee’s prior periods of service.

## **SECTION 2 ELIGIBILITY**

2.1 Each individual who was a Participant on the day immediately preceding January 1, 2015, shall continue to be a Participant as of January 1, 2015.

2.2 Each former Participant who is reemployed by a Plan Sponsor shall become a Participant as of the date of his reemployment as an Eligible Employee.

2.3 Each former Employee who severs from employment with a Plan Sponsor before becoming a Participant shall become a Participant as of the latest of the date he (a) is reemployed, (b) would have become a Participant if he had not severed from employment, or (c) becomes an Eligible Employee.

2.4 Each other Eligible Employee shall become a Participant for Elective Deferral purposes as of the Entry Date following the date the Employee first performs an Hour of Service; provided the Participant’s completed application is received and accepted by the Custodian.



2.5 Solely for the purpose of contributing a Rollover Amount to the Plan, an Eligible Employee who has not yet become a Participant pursuant to any other provision of this Section 2 shall become a Participant as of the date on which the Rollover Amount is contributed to the Plan.

### SECTION 3 CONTRIBUTIONS

3.1 (a) The Plan Sponsor shall make a contribution to the Fund on behalf of each Participant who has elected to defer a portion of Annual Compensation otherwise payable to the Participant for the Plan Year and to have that portion contributed to the Fund as an Elective Deferral. The election must be made before the Annual Compensation is currently available and may only be made pursuant to an agreement between the Participant and the Plan Sponsor, which shall be in such form and subject to such rules and limitations as the Plan Administrator may prescribe and shall specify the amount of what would otherwise be Annual Compensation that the Participant desires to defer and to have contributed to the Fund. Once a Participant has made an election for a Plan Year, the Participant may revoke or modify his election, effective as soon as administratively practicable following receipt of such election by the Plan Administrator. The contribution made by a Plan Sponsor on behalf of a Participant under this Section 3.1 shall be in an amount equal to the amount specified in the Participant's deferral agreement, but not greater than ninety percent (90%) of the Participant's Annual Compensation. The Participant may elect to designate amounts he or she has elected to defer under this Section 3.1(a) as a Designated Roth Contribution and such designation shall be irrevocable.

(b) Except to the extent permitted under Subsection (c) of this Section, no Participant shall be permitted to have Elective Deferrals made under this Plan or any other qualified plan or Code Section 403(b) plan in which the Participant participates during any taxable year in excess of \$18,000 for 2015, which amount shall be adjusted for changes in the cost of living as provided by the Secretary of the Treasury. If the amount of Elective Deferrals exceeds \$18,000 (for 2015), as adjusted, in any one taxable year of the Participant then, (1) not later than the immediately following March 1, the Participant may designate to the Plan the portion of the Participant's Deferral Amount which consists of excess Elective Deferrals (as well as the amount of excess Elective Deferrals that are Designated Roth Contributions or pre-tax Elective Deferrals), and (2) not later than the immediately following April 15, the Plan may distribute the amount designated to it under Paragraph (1) above, as adjusted to reflect income, gain, or loss attributable to it through the date of the distribution. If the Participant does not designate the amount of excess Elective Deferrals that are Designated Roth Contributions or pre-tax Elective Deferrals, the Plan Administrator shall distribute excess Elective Deferrals *pro rata*, based on the amount of pre-tax Elective Deferrals and Designated Roth Contributions made during the Plan Year in which the excess Elective Deferral occurs. The payment of any excess Elective Deferrals, as adjusted and reduced, from the Plan shall be made to the Participant without regard to any other provision in the Plan.

(c) All Employees who are eligible to make Elective Deferrals under this Plan and who have attained age 50 before the close of the Plan Year shall be eligible to make Catch-up Contributions in accordance with this Subsection (c).

(1) A Participant's Catch-up Contribution shall not exceed an amount greater than the lesser of (A) \$6,000 (for 2015), which amount shall be adjusted pursuant to Sections 414(v)(2)(B) and (C) of the Code, or (B) the excess (if any) of the Participant's Annual Compensation over any other Elective Deferrals made for the year which are made without regard to this Subsection (c).



(2) Catch-up Contributions shall not be taken into account for purposes of the dollar limitation set forth under Subsection (b) of this Section 3.1 and shall not be taken into account for purposes of applying the limitations set forth under Appendix B of the Plan.

(3) Participants may designate whether the Catch-Up Contribution is a pre-tax salary deferral or a Designated Roth Contribution. If a Participant fails to make a designation, the Catch-Up Contribution will be treated as a pre-tax salary deferral.

3.2 The Plan Sponsor will make Matching Contributions to the Fund in the amount of 8% of Annual Compensation on behalf of each Appointed Employee or Tenure Relinquishment Employee as of the Entry Date following the completion of one Year of Service with the Plan Sponsor or, for Appointed Employees or Tenure Relinquishment Employees who have completed one Year of Service as a full-time, retirement benefits eligible employee with an Eligible Employer, as of the date the Employee completes one Hour of Service with the Plan Sponsor; provided the Appointed Employee or Tenure Relinquishment Employee makes Elective Deferrals in the Plan in an amount equal to 4% of Annual Compensation.

3.3 Participants receiving benefits under the Plan Sponsor's long-term disability program or short-term disability program will automatically have 8% of the Participant's benefit under the long-term disability program or the short-term disability program contributed to the Plan subject to the limitations provided for in Appendix B.

3.4 All contributions made to the Plan shall be fully vested and nonforfeitable when such Plan contributions are made.

3.5 Any Participant may, with the consent of the Plan Administrator and subject to such rules and conditions as the Plan Administrator may prescribe, transfer a Rollover Amount to the Fund.

3.6 (a) For a class of Eligible Employees who are participants or beneficiaries under a Code Section 403(b) plan that is outside the Plan, with the consent of the Plan Administrator, amounts may be transferred directly to the Plan from the other Code Section 403(b) Plan by a Participant, provided that

(1) such contributions must be attributable solely to employer contributions and/or employee contributions made pursuant to a salary reduction agreement, as well as the earnings thereon, and must be accompanied by instructions showing the respective amounts attributable to employer and employee contributions, and must not require the Plan to provide any different or additional form or timing of benefit payment;

(2) the other Code Section 403(b) plan must permit the direct transfer of each person's entire interest therein to the Plan;

(3) in the case of a transfer for a Participant, the Participant must be an Employee or former Employee of the Plan Sponsor;

(4) in the case of a transfer for a Beneficiary of a deceased Participant, the Participant must have been an Employee or former Employee of the Plan Sponsor;

(5) the amount transferred will be credited to the Participant's or Beneficiary's Account, so that the Participant or Beneficiary whose funds are being transferred has an accumulated benefit immediately after the transfer that is at least equal to the accumulated benefit with respect to that Participant or Beneficiary immediately before the transfer;

(6) to the extent any amount transferred is subject to the distribution restrictions under Treasury Regulations Section 1.403(b)-6 (either in the Code Section 403(b) plan document or as provided in the agreement with the vendor transferring such amounts), the transferred amounts will be subject to restrictions on distributions to the Participant or Beneficiary whose assets are being transferred that are not less stringent than those imposed on the transferor plan and the transferred amount will not be considered a Deferral Amount under the Plan in determining the maximum Elective Deferrals which may be made on behalf of a Participant under Section 3.1 of the Plan.

(b) The Plan Administrator and the Custodian have the discretion to implement reasonable rules and regulations to effect the acceptance of transfers in accordance with this Section 3.6, including requiring documentation from the other plan as is deemed necessary to ensure the transfer is made in accordance with Treasury Regulations Section 1.403(b)-10(b)(3) and to confirm that the other plan is a Code Section 403(b) plan.

3.7 Contributions may be made only in cash or other property which is acceptable to the Custodian. In no event shall the sum of contributions under Plan Sections 3.1, 3.2, and 3.3 exceed the deductible limits under Code Section 404.

#### **SECTION 4 ALLOCATIONS**

4.1 (a) As soon as reasonably practicable following the date of withholding by the Plan Sponsor, if applicable, and receipt by the Custodian, Plan Sponsor contributions made on behalf of each Participant under Plan Section 3.1 and forfeitures, if any, Rollover Amounts contributed by the Participant, and any amounts transferred to the Plan pursuant to Section 3.6 of the Plan, shall be allocated to the Account of the Participant on behalf of whom the contributions were made. Notwithstanding the foregoing, except for bona fide administrative considerations, in no event shall contributions made on behalf of a Participant under Plan Section 3.1 precede the earlier of (1) the performance of services relating to the contribution and (2) when the Annual Compensation that is subject to the Participant's election under Plan Section 3.1 would be currently available to the Participant in the absence of the Participant's election to defer.

(b) For each payroll period of the Plan Sponsor for which the requirements of Section 3.2 are met, Matching Contributions shall be allocated to the Account of the applicable Participant. If a Participant's Elective Deferrals for a Plan Year reach the maximum amount set forth in Section 3.1 or Matching Contributions were not made for a payroll period because the Elective Deferrals for that payroll period were less than 4%, the Plan Sponsor shall allocate to the Participant's Account a "true-up" Matching Contribution as of the end of the Plan Year in the amount of the difference between the Matching Contribution already allocated under the Plan and the amount the Matching Contribution would have been had the Matching Contributions been made on a Plan Year-basis (instead of a payroll period basis).

4.2 To the extent not inconsistent with the Funding Vehicle and except as otherwise provided in the Plan, as of each Valuation Date the Custodian shall determine the net income or net loss of the Fund as hereinafter set forth.

(a) To the cash income, if any, since the last Valuation Date, there shall be added or subtracted, as the case may be, any net increase or decrease since the last Valuation Date in the fair market value of the assets of the Fund, any gain or loss on the sale or exchange of assets of the Fund

since the last Valuation Date, accrued interest since the last Valuation Date with respect to any interest-bearing security as to which the purchaser would be required to pay the accrued interest in addition to the quoted price, the amount of any dividend which shall have been declared since the last Valuation Date but not paid on shares of stock owned by the Fund if the market quotation used in determining the value of such shares is ex-dividend, and the amount of any other assets of the Fund determined by the Custodian to be income since the last Valuation Date. If there are subfunds or individual funds created under the Fund, the net income or net loss shall be determined in accordance with the provisions herein with regard to the allocation of net income or net loss within the subfunds or individual funds.

(b) From the sum thereof there shall be deducted all charges, expenses, and liabilities accrued since the last Valuation Date which are proper under the provisions of the Plan and which in the discretion of the Custodian are properly chargeable against income for the period.

The net income or net loss so determined shall be allocated as of the Valuation Date to the Account of each Participant in the proportion that the value of the Account of each Participant in the Fund, or any subfund or individual fund, as of the preceding Valuation Date, bears to the value of the Accounts of all Participants in the Fund, subfund, or individual fund, respectively, as of the preceding Valuation Date, as so increased and reduced.

## SECTION 5 IN-SERVICE WITHDRAWALS

5.1 The Custodian shall, upon the direction of the Plan Administrator, distribute all or a portion of a Participant's Account consisting of Deferral Amounts (but not earnings thereon) prior to the time the Account is otherwise distributable in accordance with the other provisions of the Plan. However, any distribution shall be made only if the Participant is an Employee and demonstrates that he is suffering from "hardship" as determined herein. For purposes of this Section, a distribution will be deemed to be on account of hardship if the distribution is on account of:

(a) expenses for (or necessary to obtain) medical care that would be deductible under Section 213(d) of the Code (determined without regard to whether the expenses exceed 7.5% of adjusted gross income) by the Participant or the designated Beneficiary;

(b) the purchase (excluding mortgage payments) of a principal residence for the Participant;

(c) payment of tuition, related educational fees, and room and board expenses for the next 12 months of post-secondary education for the Participant, his spouse, children, or dependents (as defined in Section 152 of the Code without regard to Section 152(b)(1), (b)(2) and (d)(1)(B)) or the designated Beneficiary;

(d) payment of burial or funeral expenses for the Participant's deceased parent, spouse, children or dependents (as defined in Section 152 of the Code, without regard to Section 152(d)(1)(B)), or the designated Beneficiary;

(e) expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Section 165 of the Code (determined without regard to whether the loss exceeds ten percent (10%) of adjusted gross income);

(f) the need to prevent the eviction of the Participant from his principal residence or foreclosure on the mortgage of the Participant's principal residence; or

(g) any other contingency determined by the Internal Revenue Service to constitute an "immediate and heavy financial need" within the meaning of Treasury Regulations Section 1.401(k)-1(d)(3)(iii).

5.2 In addition to the requirements set forth in Plan Section 5.1, any distribution pursuant to Plan Section 5.1 shall not be in excess of the amount necessary to satisfy the need determined under Plan Section 5.1 (including any amounts necessary to pay any federal, state, or local income taxes reasonably anticipated to result from the distribution) and shall also be subject to the requirements of Subsection (a) or (b) of this Section.

(a) (1) The Participant shall first obtain all distributions, other than hardship distributions, and all nontaxable (at the time of the loan) loans currently available under all plans maintained by the Plan Sponsor; and

(2) the Plan Sponsor shall not permit Elective Deferrals to be made to the Plan or any other plan maintained by the Plan Sponsor for a period of six (6) months after the Participant receives the distribution pursuant to this Section.

(b) (1) The Participant shall first obtain all other distributions, other than hardship distributions, and all nontaxable loans available under all plans maintained by the Plan Sponsor; and

(2) the Plan Administrator shall determine that it can reasonably rely on the Participant's certification by execution of a form provided by the Plan Administrator that the need determined under Plan Section 5.1 can not be relieved --

(A) through reimbursement or compensation by insurance or otherwise,

(B) by reasonable liquidation of the assets of the Participant, his spouse, and his minor children, to the extent that the liquidation would not itself cause an immediate and heavy financial need and to the extent that the assets of the spouse and minor children are reasonably available to the Participant,

(C) by cessation of Elective Deferrals,

(D) by other currently available distributions or nontaxable (at the time of the distribution) loans from plans maintained by the Plan Sponsor or any other employer; or

(E) by borrowing from commercial sources on reasonable commercial terms in an amount sufficient to satisfy the need.

The distribution shall be made pursuant to Subsection (b) of this Section unless the Plan Administrator determines that it can not reasonably rely on the Participant's certification under Paragraph (2) of Subsection (b) of this Section, and shall be made only in accordance with such rules, policies, procedures, restrictions, and conditions as the Plan Administrator may from time to time adopt.

5.3 Any determination of the existence of hardship and the amount to be distributed on account thereof shall be made by the Plan Administrator (or any other person as may be required to make such decisions) in accordance with the foregoing rules as applied in a uniform and nondiscriminatory manner. In the case of a married Participant, the Participant's in-service withdrawal application must include a spousal consent which has been given in accordance with the Plan Section containing the definition of the term "Beneficiary." A distribution under this Section 5 shall be made in a lump sum to the Participant.

5.4 With respect to amounts contributed to the Plan prior to January 1, 2015, a Participant who has reached age 59½ may elect to receive a one-time distribution of up to 10% of the sum of the Participant's Matching Account and Mandatory Contribution Account and unlimited distributions from the Participant's Deferral Account, Designated Roth Contribution Account and Rollover Account. Distributions under this Section 5.4 shall be made in the form of a lump sum, and are subject to the spousal consent requirements contained in the definition of the term "Beneficiary". The applicable Funding Vehicle will determine if surrender charges apply to the distribution.

5.5 Participants may take distributions from their Rollover Account at any time subject to the spousal consent requirements contained in the definition of the term "Beneficiary."

## **SECTION 6 DEATH BENEFITS**

6.1 Upon the death of a Participant, his Beneficiary shall be entitled to the full value of his Accumulated Benefit.

6.2 If, subsequent to the death of a Participant, the Participant's Beneficiary dies while entitled to receive benefits under the Plan, the successor Beneficiary, if any, or the Beneficiary listed under Subsection (a) or (b) of the Plan Section containing the definition of the term "Beneficiary" shall generally be entitled to receive benefits under the Plan. However, if no successor Beneficiary designated by the Participant is alive and no Beneficiary listed under Subsection (a) or (b) of the Plan Section containing the definition of the term "Beneficiary" is alive, the Participant's unpaid vested Accumulated Benefit shall be paid to the personal representative of the deceased Beneficiary's estate.

6.3 Any benefit payable under this Section 6 shall be paid in accordance with and subject to the provisions of Plan Section 7 after receipt by the Custodian from the Plan Administrator of notice of the death of the Participant.

## **SECTION 7 PAYMENT OF BENEFITS ON RETIREMENT OR DISABILITY**

7.1 The Accumulated Benefit of a Participant shall be payable to the Participant upon the Participant's severance from employment with the Employer or Disability. A Participant on qualified military service (within the meaning of Code Section 414(u)) for more than 30 days shall be considered severed from employment for purposes of taking a distribution of his or her Account; provided, however, that if such Participant elects to take a distribution of his or her Account (in accordance with the applicable Funding Vehicle), such Participant shall be prohibited from making Elective Deferrals to the Plan for a six-month period beginning on the date of the distribution.

The Accumulated Benefit of a Participant which is to be paid under this Section 7 shall be determined as of the last day of the Plan Year coinciding with or next preceding the Participant's severance from employment or Disability, increased by any contributions allocated to the Account of the Participant since that Valuation

Date, decreased by any distributions made since that Valuation Date from the Participant's Account, and adjusted for a pro rata share of any income, gains, and losses attributable thereto through the Valuation Date coinciding with or immediately preceding the date the Accumulated Benefit is paid. Unless the Participant elects otherwise, payments to a Participant, or to the Beneficiary of a deceased Participant, shall commence no later than sixty (60) days after the last day of the Plan Year in which the latest of the following occurs: the Participant attains age 65, the tenth anniversary of the Participant's commencement of participation in the Plan occurs, or the Participant's severance from employment with the Plan Sponsor occurs. Notwithstanding the foregoing, the failure of a Participant to make an affirmative election to commence payment of his benefit shall be deemed to be an election to defer commencement of such benefit. If the amount of the payment required to commence on a date can not be ascertained by that date, payment shall commence retroactively to that date and shall commence no later than sixty (60) days after the earliest date on which the amount of payment can be ascertained.

7.2 (a) The payment of a Participant's Accumulated Benefit shall be made in a lump sum payment. However, if a Participant's Accumulated Benefit exceeds \$5,000, the Participant may elect an alternate form of payment specified in Subsection (b) of this Section 7.2.

(b) The alternate forms of payment are:

(1) the Qualified Optional Survivor Annuity;

(4) certain life annuity where the Participant shall have the option to elect to have the Accumulated Benefit paid for ten, fifteen or twenty years guaranteed payment (but not exceeding the Participant's life expectancy at the time payments commence);

(5) single life annuity; and

(6) joint and survivor annuity where the Participant shall have the option to elect to have the Accumulated Benefit paid in the form of a 50%, 66-2/3%, or 100% survivor annuity pursuant to which form, the elected percentage of the monthly amount paid to the Participant during the Participant's life will be paid to the Participant's duly elected surviving beneficiary during the remainder of the surviving Beneficiary's life

(c) If the Participant selects payment in the form of a life annuity, the Participant's Accumulated Benefit shall be paid in the Qualified Annuity Form of Payment unless the Participant elects during the "applicable election period" (as hereinafter defined) not to receive the Qualified Annuity Form of Payment by execution and delivery to the Plan Administrator of a form provided for that purpose by the Plan Administrator in which the Participant identifies the particular alternate form of payment and, if applicable, the specific nonspouse Beneficiary. For purposes of this Section, the term "applicable election period" shall mean, with respect to a Qualified Annuity Form of Payment described in Subsection (a) or (b) of the Plan Section containing the definition of "Qualified Annuity Form of Payment," the 180-day period ending on the first date on which the Participant is entitled to payment from the Fund, and with respect to a Qualified Annuity Form of Payment described in Subsection (c) of the Plan Section containing the definition of the term "Qualified Annuity Form of Payment," the period which begins on the first day of the Plan Year in which an Eligible Employee becomes a Participant and which ends on the date of his death. In the case of a Participant who has a spouse on the date payments are to commence, no election shall be effective unless spousal consent is obtained in accordance with provisions of the Plan Section containing the definition of the term "Beneficiary."

If an election is made, the Participant's Accumulated Benefit shall be paid in the form set forth in



Subsection (b) of this Section chosen by the Participant by written instrument delivered to the Plan Administrator prior to the date payments are otherwise to commence. Any waiver of a Qualified Annuity Form of Payment made prior to the first day of the Plan Year in which the Participant attains age 35 shall become invalid as of the first day of the Plan Year in which the Participant attains age 35 if the Participant was an Employee when the waiver was made, and the provisions of the Plan Section containing the definition of the term "Beneficiary" shall apply unless a new waiver is obtained.

(d) With respect to each Participant who selects payment in the form of a life annuity, the Plan Administrator shall furnish to the Participant a written explanation of:

(1) the terms and conditions of the Qualified Annuity Form of Payment, including a general description of the conditions and eligibility and other material features of the alternate forms of payment under the Plan,

(2) the Participant's right to make, and the effect of, an election not to receive the Qualified Annuity Form of Payment, including a general description of the conditions of eligibility and other material features of the alternate forms of payment under the Plan,

(3) the rights of the Participant's spouse as described in Subsection (c) of this Section, and

(4) the right to make, and the effect of, a revocation of an election pursuant to this Section.

(e) In the case of a Qualified Annuity Form of Payment described under Subsection (a) or (b) of the Plan Section containing the definition of "Qualified Annuity Form of Payment," the written explanation shall be provided to the Participant within the period of time not less than 30 days nor more than 180 days prior to the first date on which he is entitled to payment from the Fund; provided, a Participant may elect to waive the minimum thirty (30) day notice period and to receive (or commence) his distribution before the end of the seven (7) day period beginning on the date the Participant receives such written explanation. In the case of a Qualified Annuity Form of Payment described in Subsection (c) of the Plan Section containing the definition of Qualified Annuity Form of Payment, the written explanation shall be provided to the Participant in whichever of the following periods ends last:

(1) the period beginning with the first day of the Plan Year in which the Participant attains age 32 and ending on the last day of the Plan Year preceding the Plan Year in which the Participant attains age 35; or

(2) the period beginning one year before and ending one year after the Employee first becomes a Participant; or

(3) the period beginning one year before and ending one year after the provisions of this Subsection (e) apply to the Participant.

In the case of a Participant who separates from service before attaining age 35, the written explanation shall be provided in the period beginning one year before and ending one year after separation from service occurs.

(f) A Participant may revoke any election not to receive payment in the form of a



Qualified Annuity Form of Payment at any time prior to commencement of payments from the Fund, and may make a new election at any time prior to the commencement of payments from the Fund.

7.3 Notwithstanding any provision of the Plan to the contrary,

(a) if a Participant's vested Accumulated Benefit exceeds \$5,000,

(1) it shall not, without the Participant's consent, be distributed prior to the date the Participant attains his Normal Retirement Age; or

(2) if the Participant is deceased and was married, it shall not, without the consent of the Participant's surviving spouse, be distributed prior to the date the Participant would have attained, if not dead, his Normal Retirement Age; and

(b) the payments to be made to a Participant, shall satisfy the incidental death benefit requirements under Code Section 401(a)(9)(G) and the regulations thereunder.

7.4 Notwithstanding any other provisions of the Plan,

(a) The Participant's entire Accumulated Benefit shall be distributed, or begin to be distributed, to the Participant not later than the Participant's required beginning date.

(b) If the Participant dies before distributions begin, the Participant's vested Accumulated Benefit shall be distributed, or begin to be distributed, no later than as follows:

(1) If the Participant's surviving spouse is the Participant's sole designated beneficiary, distributions to the surviving spouse shall begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.

(2) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, then distributions to the designated beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(3) If there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's vested Accumulated Benefit shall be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

For purposes of this Section 7.4(b) and Section 7.4(e) of the Plan, distributions are considered to begin on the Participant's required beginning date. If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 7.4(b)(1) of the Plan), the date distributions are considered to begin is the date distributions actually commence.

(c) Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Subsections (d) and (e) of this Section 7.4. If the Participant's interest is distributed in the form of an annuity purchased

from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury Regulations.

(d) (1) During the Participant's lifetime, the minimum amount that shall be distributed for each distribution calendar year is the lesser of:

(A) the quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or

(B) if the Participant's sole designated beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthday in the distribution calendar year.

(2) Required minimum distributions shall be determined under this Section 7.4(d) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

(e) (1) If the Participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that shall be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated beneficiary, determined as follows:

(A) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(B) If the Participant's surviving spouse is the Participant's sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(C) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the designated beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(2) If the Participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that shall be distributed for each calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance

by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(f) (1) If the Participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that shall be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated beneficiary, determined as provided in Section 7.4(e) of the Plan.

(2) If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's vested Accumulated Benefit shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(g) For purposes of this Section 7.4 of the Plan --

(1) "designated beneficiary" means the individual who is designated as the beneficiary under Section 1.6 of the Plan and is the designated beneficiary under Section 401(a)(9) of the Code and Treas. Reg. Section 1.401(a)(9)-4;

(2) "distribution calendar year" means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 7.4(b) of the Plan. The required minimum distribution for the Participant's first distribution calendar year shall be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, shall be made on or before December 31 of that distribution calendar year;

(3) "life expectancy" means life expectancy as computed by use of the Single Life Table in Treas. Reg. Section 1.401(a)(9)-9;

(4) "Participant's account balance" means the account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year; and

(5) "required beginning date" means for a Participant who is not a five-percent owner (as defined in Code Section 416), the April 1 of the calendar year following the later of (i) the calendar year in which the Participant attains age 70 ½, and (ii) the calendar year in which the Participant retires; and means for a Participant who is a five-percent owner, the April 1 of the calendar year following the year in which the Participant attains age 70 ½. A Participant who (i) is not a five-percent owner, (ii) attained age 70 ½ before January 1, 1997, (iii) is an active Employee, and (iv) is receiving distributions under the Plan, may continue to receive Plan distributions or may elect to defer the receipt of Plan distributions until the

Participant retires from service with Employer, provided any such election complies with Code Sections 401(a)(11) and 417 or the alternative rules for compliance under Internal Revenue Service Notice 97-75, Q&A-8.

(h) Notwithstanding any Plan provision to the contrary, all distributions under this Section 7.4 shall be made in accordance with Treasury Regulations Section 1.403(b)-6(e) using the required beginning date as defined under Subsection (g) of this Section 7.4 of the Plan.

7.5 (a) If a Participant or Beneficiary who is a distributee of any eligible rollover distribution

(1) elects to have the distribution paid to an eligible retirement plan, and

(2) specifies the eligible retirement plan to which the distribution is to be paid in such form and at such time as the Plan Administrator may prescribe,

the distribution shall be made in the form of a direct trustee-to-trustee transfer to the eligible retirement plan so specified.

(b) A Participant or Beneficiary who is a distributee of any eligible rollover distribution may elect to receive the eligible rollover distribution and roll over the distribution himself.

(c) If a Participant or Beneficiary is a distributee of any eligible rollover distribution, the Participant's or Beneficiary's vested Accumulated Benefit is \$5,000 or less but more than \$1,000, and the Participant or Beneficiary fails to make an election under Subsection (a) or (b) of this Section 7.5, the Plan Administrator shall direct that such eligible rollover distribution be paid in a direct rollover to the individual retirement plan or arrangement designated by the Plan Administrator; provided, this Subsection (c) shall not apply to a Participant who has attained Normal Retirement Age, an alternate payee who is entitled to benefits under Section 11.1 of the Plan, or a Beneficiary who is a surviving spouse.

(d) Subsection (b) of this Section shall apply only to the extent that the eligible rollover distribution would be includable in gross income if not transferred, determined without regard to Code Section 402(c).

(e) For purposes of this Section 7.5 of the Plan, the term "eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an "eligible rollover distribution" does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated Beneficiary, or for a specified period of ten years or more; and any distribution that is made on account of hardship; any distribution to the extent such distribution is required under Code Section 401(a)(9). A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of Designated Roth Contributions which are not includable in gross income. However, such portion may be transferred only to a Roth IRA under Code Section 408A or a qualified plan described in Code Section 401(a) or 403(b) that agrees to separately account for amounts so transferred, including for accounting separately for the portion of such distribution which is includable and not includable in gross income, as required under Code Section 402A.

(f) For purposes of this Section 7.5 of the Plan, the term “eligible retirement plan” means --

- (1) an individual retirement account described in Code Section 408(a);
- (2) an individual retirement annuity described in Code Section 408(b);
- (3) an annuity plan described in Code Section 403(a);
- (4) a qualified trust described in Code Section 401(a);
- (5) an annuity contract described in Code Section 403(b);
- (6) an eligible plan under Code Section 457(b) which is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; and
- (7) if any portion of the eligible rollover distribution is attributable to Designated Roth Contributions, a Roth IRA under Code Section 408A or another designated Roth account

that accepts the distributee’s eligible rollover distribution and, with respect to Paragraphs (6) and (7) agrees to account separately for amounts transferred into such plan from this Plan. The definition of “eligible retirement plan” shall also apply in the case of a distribution to a surviving spouse or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in Code Section 414(p). The definition of “eligible retirement plan” shall also include an individual retirement plan described in Paragraphs (1) and (2) of this Section (f) established for the purpose of receiving the distribution on behalf of an individual who is a designated beneficiary (as defined in Paragraph (1) of Subsection (g) of Section 7.4 of the Plan and who is not the surviving spouse of the Participant.

## SECTION 8 LOANS

8.1 A Participant may request a loan, subject to availability, restrictions and limitations pursuant to the applicable Funding Vehicle, by notifying the Plan Administrator, or its representative, in accordance with procedures established by the Plan Administrator or its representative; provided, however, that all such procedures shall comply with Code Section 72(p), including Regulations thereunder, and ERISA Section 408, including Regulations thereunder.

8.2 All loans shall be subject to the spousal consent requirements contained in the definition of the term “Beneficiary” and the approval of the Plan Administrator or its representative and such approval shall be granted or withheld in a uniform and nondiscriminatory manner and in accordance with the rules and procedures as the Plan Administrator or its representatives may adopt.

8.3 Loan repayments under the Plan shall be suspended as required under Code Section 414(u) in connection with any period of a Participant’s military service.

**SECTION 9**  
**ADMINISTRATION OF THE PLAN**

9.1 Operation of the Plan Administrator. Until such time as the Primary Sponsor shall appoint a different Plan Administrator, the Plan Administrator shall be the Primary Sponsor. If an organization is appointed to serve as the Plan Administrator, then it may designate in writing a person who may act on its behalf as Plan Administrator. The Primary Sponsor may remove the Plan Administrator at any time by written notice. The Plan Administrator may resign at any time by written notice to the Custodian and the Primary Sponsor. Upon removal or resignation, or in the event of the dissolution of the Plan Administrator, the Primary Sponsor shall appoint a successor.

9.2 Fiduciary Responsibility.

(a) The Plan Administrator, as a Named Fiduciary, may allocate its fiduciary responsibilities among Fiduciaries other than the Custodian and may designate in writing persons other than the Custodian to carry out its fiduciary responsibilities under the Plan. The Plan Administrator may remove any person designated to carry out its fiduciary responsibilities under the Plan by written notice to such person.

(b) The Plan Administrator and each other Fiduciary may employ persons to perform services and to render advice with regard to any of the Fiduciary's responsibilities under the Plan. Charges for all such services performed and advice rendered may be directly paid by each Plan Sponsor but until paid shall constitute a charge against the Fund.

(c) Each Plan Sponsor shall indemnify and hold harmless each person constituting the Plan Administrator from and against any and all claims, losses, costs, expenses (including, without limitation, attorney's fees and court costs), damages, actions or causes of action arising from, on account of, or in connection with the performance of his duties in that capacity, other than such of the foregoing arising from, on account of, or in connection with the willful neglect or willful misconduct of the person.

9.3 Duties of the Plan Administrator.

(a) The Plan Administrator shall advise the Custodian with respect to all payments under the Plan and shall direct the Custodian in writing to make payments from the Fund. However, in no event shall the Custodian be required to make payments if the Custodian has actual knowledge that the payments are contrary to the terms of the Plan.

(b) The Plan Administrator shall establish rules, not contrary to the Plan and the Funding Vehicle, for the administration of the Plan and the transaction of its business. The Plan Administrator shall establish practices and procedures designed to promote compliance with the qualification requirements under the Code in accordance with the Employee Plans Compliance Resolution System promulgated by the Internal Revenue Service. All elections and designations under the Plan by a Participant or Beneficiary shall be made on forms prescribed by the Plan Administrator. The Plan Administrator shall have the sole discretionary authority to construe the terms of the Plan and all facts surrounding claims for benefits under the Plan and shall determine all questions arising in the administration, interpretation and application of the Plan, including, but not limited to, those concerning eligibility for benefits, and it shall not act so as to discriminate in favor of any person. Accordingly, benefits under the Plan will be paid only if the Plan Administrator decides in its discretion that an applicant is entitled to benefits. All determinations of the Plan Administrator shall be conclusive and binding on all parties, including but not limited to, Employees,



Participants, Beneficiaries, and Fiduciaries, subject to the Plan and the Funding Vehicle and applicable law.

(c) The Plan Administrator shall furnish Participants and Beneficiaries with all disclosures required by ERISA or the Code. The Plan Administrator shall file the various reports and disclosures concerning the Plan and its operations required by ERISA and the Code, and shall be solely responsible for maintaining all records of the Plan.

(d) The statement of specific duties for a Plan Administrator in this Section is not in derogation of any other duties which a Plan Administrator has under the Plan or under applicable law.

9.4 Action by a Plan Sponsor. Any action to be taken by a Plan Sponsor shall be taken by resolution or written direction of its board of trustees or other appropriate governing body. However, the board of trustees or appropriate governing body may delegate to any officer or other appropriate person of a Plan Sponsor the authority to take any actions.

9.5 Investment Instruction. Each Participant and Beneficiary shall have a reasonable opportunity to give investment instructions (in writing or otherwise, with an opportunity to obtain written confirmation of such instructions) to a Fiduciary who is obligated to comply with the instructions as required under Section 2550.404c-1(b) of the U.S. Department of Labor Regulations.

9.6 Veterans' Reemployment Act. Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u).

## SECTION 10 CLAIM REVIEW PROCEDURE

10.1 If a Participant or Beneficiary is denied a claim for benefits under a Plan, the Plan Administrator shall provide to the claimant written notice of the denial within 90 days, except for claims involving determination of the existence of a Disability, in which case the written notice shall be furnished within 45 days. However, under special circumstances (to be determined by the Plan Administrator), the Plan Administrator may extend the time for processing the claim to a day no later than 180 days (or 75 days for determination of Disability) from the date of its receipt of the claim. The claimant shall be notified in writing of the need to extend the time for review and the date by which a decision is expected. The written notice of denial shall set forth:

- (a) the specific reason(s) for the denial;
- (b) specific references to the pertinent provision(s) of the Plan on which the denial is based;
- (c) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why the material or information is necessary;
- (d) a description of the Plan's review procedures and time limits applicable to such procedures, including a statement of the claimant's right to bring suit following an appeal of the claim denial; and



(e) in the case of a claim involving a Disability determination, the internal guideline, protocol, or other criteria relied on in making the adverse determination (if any), or a statement that such information will be provided free of charge to the claimant upon request.

10.2 After receiving written notice of the denial of a claim, a claimant or his representative may:

(a) request a full and fair review of the denial by written application to the Plan Administrator;

(b) review pertinent documents and be provided, upon request and free of charge, access to all relevant documents, records, and other information relevant to the claimant's claim for benefits; and

(c) submit written comments, documents, records, and other information relating to the claim for benefits to the Plan Administrator.

10.3 If the claimant wishes a review of the decision denying his claim to benefits under the Plan, he must submit the written application to the Plan Administrator within sixty (60) days (180 days for claims involving the determination of a Disability) after receiving written notice of the denial. The claimant shall have the opportunity to submit written comments, documents, and other information to the Plan Administrator. The Plan Administrator's decision on review shall take into account new information submitted. Further, a review of a Disability determination shall (1) not afford deference to the initial adverse determination; (2) be conducted by a Fiduciary of the Plan who is neither the individual who made the adverse determination that is the subject of the appeal nor the subordinate of such individual; (3) involve consultation with a health care professional who has appropriate training and experience in the field of medicine involved, which individual shall be neither the individual who was consulted in connection with the adverse benefit determination that is the subject of the appeal, nor the subordinate of any such individual; and (4) provide for the identification of medical or vocational experts whose advice was obtained on behalf of the Plan in connection with the claimant's adverse benefit determination, without regard to whether the advice was relied upon in making the benefit determination.

10.4 Upon receiving the written application for review, the Plan Administrator may schedule a hearing, to take place within thirty (30) days, for purposes of reviewing the claimant's claim.

10.5 At least ten (10) days prior to the scheduled hearing, the claimant and any representative designated in writing by him shall receive written notice of the date, time, and place of the scheduled hearing. The claimant or his representative may request that the hearing be rescheduled for his convenience on another reasonable date or at another reasonable time or place.

10.6 All claimants requesting a review of the decision denying their claim for benefits may employ counsel for purposes of the hearing.

10.7 No later than sixty (60) days (45 days for claims involving the determination of Disability) following the receipt of the written application for review, the Plan Administrator shall submit its decision on the review in writing to the claimant and to his representative, if any. However, a decision on the written application for review may be extended, if special circumstances such as the need to hold a hearing require an extension of time, to a day no later than one hundred twenty (120) days (90 days for claims involving the determination of Disability) after the date of receipt of the written application for review. The claimant shall be notified in writing of the need to extend the time for review and the date by which a decision on review is expected. The written notice on review shall set forth:

- (a) the specific reason(s) for the denial;
- (b) specific references to the pertinent Plan provision(s) on which the denial is based;
- (c) the claimant's right to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits;
- (d) a description of any voluntary appeal procedures offered by the Plan and the claimant's right to obtain a copy of such procedures;
- (e) a statement of the claimant's right to bring suit; and
- (f) in the case of a claim involving a Disability determination, the internal guideline, protocol, or other criteria relied on in making the adverse determination (if any), or a statement that such information will be provided free of charge to the claimant upon request.

10.8 No legal action may be commenced or maintained against the Plan more than ninety (90) days after the Plan Administrator's decision on review pursuant to Section 10.7 of the Plan.

**SECTION 11  
LIMITATION OF ASSIGNMENT, PAYMENTS  
TO LEGALLY INCOMPETENT DISTRIBUTEES,  
AND UNCLAIMED PAYMENTS**

11.1 No benefit payable under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void. No benefit shall be liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person, nor shall it be subject to attachment or legal process for, or against, any person, and the same shall not be recognized under the Plan, except to the extent required by law. Notwithstanding the above, this Section shall not apply to a "qualified domestic relations order" (as defined in Code Section 414(p)), and benefits may be paid pursuant to the provisions of such an order. A domestic relations order shall not be treated as failing to satisfy the requirements of a qualified domestic relations order solely because it requires payment to an alternate payee prior to the date on which the Participant attains (or would have attained) the "earliest retirement age" (as defined in Code Section 414(p)(4)(B)). The Plan Administrator shall develop procedures to determine whether a domestic relations order is qualified and for complying therewith. Further, notwithstanding the above, Plan benefits of a Participant may be offset (*i.e.*, reduced), in the Plan Administrator's sole discretion, to the extent permitted by ERISA Section 206(d)(4).

11.2 If any person entitled to any benefit becomes bankrupt or attempts to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge any benefit under the Plan, then the payment of the benefit shall, in the discretion of the Plan Administrator, terminate and the Custodian shall hold or apply the payment for the benefit of the person, his spouse, children, other dependents, or any of them in the manner and in the proportion that the Plan Administrator deems appropriate.

11.3 Whenever any benefit is to be paid to or for the benefit of any person who is a minor or determined to be incompetent by qualified medical advice, the Plan Administrator need not require the appointment of a guardian or custodian, but may cause the benefit to be paid to the person having custody of the minor or incompetent, or to the minor or incompetent without the intervention of a guardian or

custodian, or to the legal guardian or custodian if one has been appointed, or may cause the benefit to be used for the benefit of the minor or incompetent.

11.4 If the Plan Administrator can not ascertain the whereabouts of any Participant or Beneficiary to whom a payment is due after making reasonable efforts to locate the Participant or Beneficiary, the Plan Administrator may direct that the payment and all remaining payments otherwise due to the Participant or Beneficiary be cancelled on the records of the Plan and the amount thereof treated as a forfeiture and used to reduce Plan Sponsor contributions to the Plan or to pay Plan expenses. If the Participant or Beneficiary later notifies the Plan Administrator of his whereabouts and requests the payments due to him, a Plan Sponsor shall contribute to the Plan an amount equal to the payment to be paid to him as soon as administratively feasible.

## **SECTION 12 PROHIBITION AGAINST DIVERSION**

No part of the Fund shall be used for purposes other than the exclusive benefit of the Participants or their Beneficiaries, subject, however, to the payment of all taxes and administrative expenses and subject to the provisions of the Plan with respect to returns of contributions.

## **SECTION 13 LIMITATION OF RIGHTS**

Membership in the Plan shall not give any Employee any right or claim except to the extent that the right or claim is specifically fixed under the terms of the Plan. The adoption of the Plan by any Plan Sponsor shall not be construed to give any Employee a right to be continued in the employ of a Plan Sponsor or as interfering with the right of a Plan Sponsor to terminate the employment of any Employee at any time.

## **SECTION 14 AMENDMENT TO OR TERMINATION OF THE PLAN**

14.1 The Primary Sponsor, through the procedure of the adoption of a resolution by its Board of Trustees or the execution of a document by any officer who is authorized by the Board of Trustees, may amend or terminate the Plan by written notice to the Custodian. However, the Primary Sponsor may not amend the Plan in a manner which would cause or permit any portion of the Fund to be used for any purpose other than for the exclusive benefit of Participants or their Beneficiaries, or would cause or permit any portion of the Fund to become the property of a Plan Sponsor. Further, the duties or liabilities of the Custodian shall not be increased without the Custodian's written consent. No amendment may retroactively change or deprive Participants or Beneficiaries of rights already accrued under the Plan. No Plan Sponsor other than the Primary Sponsor may amend or terminate the Plan.

14.2 Each Plan Sponsor other than the Primary Sponsor may terminate its participation in the Plan by resolution of its board of trustees or other appropriate governing body and written notice to the Primary Sponsor and the Custodian. If contributions by or on behalf of a Plan Sponsor are completely terminated, the Plan shall be deemed terminated as to that Plan Sponsor. Any termination by a Plan Sponsor shall not be a termination as to any other Plan Sponsor.

14.3 (a) If the Plan is terminated by the Primary Sponsor, it shall terminate as to all Plan Sponsors and the Fund shall be used, subject to the payment of expenses and taxes, for the benefit of Participants and Beneficiaries, and for no other purposes, and the Account of each affected Participant shall be fully vested.

(b) In the event of the partial termination of the Plan, each affected Participant's Account shall be fully vested.

14.4 If the Plan is terminated with respect to a Plan Sponsor, the Accounts of the Participants with respect to the Plan as adopted by such Plan Sponsor shall be held subject to the instructions of the Plan Administrator.

14.5 In the case of any merger or consolidation of the Plan with, or any transfer of the assets or liabilities of the Plan to, any other plan, the terms of the merger, consolidation, or transfer shall be such that each Participant will receive a benefit which is no less than the benefit which the Participant would have received immediately before the merger, consolidation, or transfer.

14.6 Notwithstanding any other provision of the Plan to the contrary, a lump sum distribution may be made from a Participant's Account upon termination of the Plan provided that the Plan Sponsor or an Affiliate does not make contributions to any Code Section 403(b) contract that is not part of the Plan during the period beginning on the date of Plan termination and ending twelve (12) months after distribution of all assets from the Plan, except as permitted under Treasury Regulations Section 1.403(b)-10(a)(1).

14.7 Notwithstanding any other provision of the Plan, an amendment to the Plan --

(a) which eliminates or reduces an early retirement benefit, if any, or which eliminates or reduces a retirement-type subsidy (as defined in regulations issued by the Department of the Treasury), if any, or

(b) which eliminates an optional form of benefit

shall not be effective with respect to benefits attributable to service before the amendment is adopted. In the case of a retirement-type subsidy described in Subsection (a) above, this Section shall be applicable only to a Participant who satisfies, either before or after the amendment, the preamendment conditions for the subsidy.

14.8 Upon termination of the Plan, the Plan Administrator shall make reasonable efforts to locate all Participants and Beneficiaries to whom payment is due in accordance with the procedures set forth in guidance issued by the United States Department of Labor ("DOL") from time to time. If a Participant or Beneficiary to whom payment is due cannot be located, or if the Plan Administrator cannot otherwise obtain directions concerning the distribution of the Participant's or Beneficiary's benefit, the Plan Administrator shall follow the procedures for distribution of benefits as set forth by the DOL in guidance that may be issued from time to time, which procedures may include establishing an individual retirement account or an individual retirement annuity under Code Section 408(a) or 408(b).

## **SECTION 15 ADOPTION OF THE PLAN BY AFFILIATES**

Any Affiliate or other business entity related to the Primary Sponsor by function or operation, if authorized to do so by the Board of Trustees, may adopt the Plan. Any adoption shall be evidenced by resolutions of the governing body of the Affiliate or other business entity indicating the adoption. The resolutions shall define the effective date for the purpose of the adopting Affiliate or other business entity, and, for the purpose of Code Section 415, the "limitation year" as to the adopting Affiliate or other business entity.

**SECTION 16**  
**RETURN OF CONTRIBUTIONS**

16.1 To the extent permitted by the Code and applicable regulations thereunder, upon a Plan Sponsor's request, a contribution which was made by reason of a mistake of fact, or which was nondeductible under Code Section 404, shall be returned to a Plan Sponsor within one (1) year after the payment of the contribution, or the disallowance of the deduction (to the extent disallowed), whichever is applicable.

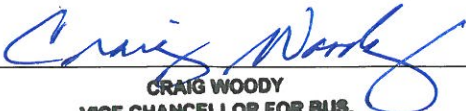
16.2 If a contribution was made by reason of a mistake of fact or was not deductible, the amount to be returned to the Plan Sponsor shall be the excess of the contribution above the amount that would have been contributed had the mistake of fact or the mistake in determining the deduction not occurred, less any net loss attributable to the excess. Any net income attributable to the excess shall not be returned to the Plan Sponsor. No return of any portion of the excess shall be made to a Plan Sponsor if the return would cause the balance in a Participant's Account to be less than the balance would have been had the mistaken contribution not been made.

**SECTION 17**  
**INCORPORATION OF SPECIAL LIMITATIONS**

Appendices A and B to the Plan, attached hereto, are incorporated by reference and the provisions of the same shall apply notwithstanding anything to the contrary contained herein.

IN WITNESS WHEREOF, the Primary Sponsor has caused this indenture to be executed as of the date first above written.

COLORADO SEMINARY

By:   
CRAIG WOODY  
VICE CHANCELLOR FOR BUS.  
AND FINANCIAL AFFAIRS/  
TREASURER

ATTEST:

Claire Brownell

Title: Assistant Secretary of the Board of Trustees

[SEAL]

## APPENDIX A

### SPECIAL NONDISCRIMINATION RULES

#### SECTION 1

As used in this Appendix, the following words shall have the following meanings:

(a) “Highly Compensated Eligible Participant” means a Participant who is an Employee during any particular Plan Year and who is a Highly Compensated Employee.

(b) “Matching Contribution” means any contribution made by a Plan Sponsor to a Matching Account and any other contribution made to a plan by a Plan Sponsor or an Affiliate on behalf of an Employee on account of a contribution made by an Employee or on account of a Deferral Amount.

(c) “Non-Highly Compensated Eligible Participant” means a Participant who is not a Highly Compensated Employee during any particular Plan Year and who has attained age 21 and completed a “year of service” as defined in Code Section 410(a)(3).

#### SECTION 2

The Plan Administrator shall have the responsibility of monitoring the Plan’s compliance with the limitations of this Appendix and shall have the power to take all steps it deems necessary or appropriate to ensure compliance, including, without limitation, restricting the amount which Highly Compensated Eligible Participants can elect to have contributed pursuant to Plan Section 3.1. Any actions taken by the Plan Administrator pursuant to this Appendix A shall be pursuant to non-discriminatory procedures consistently applied.

#### SECTION 3

In addition to any other limitations set forth in the Plan, Matching Contributions under the Plan for each Plan Year must satisfy one of the following tests:

(a) The contribution percentage for Highly Compensated Eligible Participants must not exceed 125% of the contribution percentage for all Non-Highly Compensated Eligible Participants; or

(b) The contribution percentage for Highly Compensated Eligible Participants must not exceed the lesser of (1) 200% of the contribution percentage for all Non-Highly Compensated Eligible Participants, and (2) the contribution percentage for all Non-Highly Compensated Eligible Participants plus two (2) percentage points.

The “contribution percentage” for Highly Compensated Eligible Participants for a Plan Year shall be the average of the ratios, calculated separately for each Participant, of (A) to (B), where (A) is the amount of Matching Contributions under the Plan (excluding Matching Contributions which are used to satisfy the



minimum required contributions to the Accounts of Participants who are Employees during any particular Plan Year and who are not key employees pursuant to Code Section 416) and nondeductible employee contributions made under the Plan for the Eligible Participant for the Plan Year (determined under the rules of Treasury Regulations Sections 1.401(m)-2(a)(4) and (5)), and where (B) is the Annual Compensation of the Participant for the Plan Year. The “contribution percentage” for all Non-Highly Compensated Eligible Participants for a Plan Year shall be the average of the ratios, calculated separately for each Participant, of (A) to (B), where (A) is the amount of Matching Contributions under the Plan (excluding Matching Contributions which are used to satisfy the minimum required contributions to the Accounts of Participants who are Employees during any particular Plan Year and who are not key employees pursuant to Code Section 416) and nondeductible employee contributions made under the Plan for the Eligible Participant for the Plan Year (determined under the rules of Treasury Regulations Sections 1.401(m)-2(a)(4) and (5)), and where (B) is the Annual Compensation of the Eligible Participant for the immediately preceding Plan Year. For purposes of the preceding two sentences, if the Plan Administrator elects to disaggregate otherwise excludable Employees pursuant to Code Section 410(b)(4)(B) to determine whether the Plan satisfies the minimum coverage requirements of Code Section 410(b)(1), the Plan Administrator is permitted to exclude from consideration all Eligible Employees (other than Highly Compensated Employees) who have not met the minimum age and service requirements of Code Section 410(a)(1)(A). In addition, except to the extent limited by Treasury Regulations Section 1.401(m)-2(a)(6), a Plan Sponsor may elect to treat Deferral Amounts as Matching Contributions for the purpose of determining the “contribution percentage.” In all events, the provisions of Treasury Regulations Section 1.401(m)-1(b) shall apply.

For purposes of this Section 3, in the case of the first Plan Year, the amount taken into account as the contribution percentage of Non-Highly Compensated Eligible Participants for the preceding Plan Year shall be three percent (3%) or the contribution percentage of Non-Highly Compensated Eligible Participants determined for such first Plan Year.

#### SECTION 4

If the Matching Contributions and nondeductible employee contributions and, if taken into account under Section 3 of this Appendix, the Deferral Amounts made by or on behalf of Highly Compensated Eligible Participants exceed the amount permitted under the “contribution percentage test” for any given Plan Year, then, before the close of the Plan Year following the Plan Year for which the excess aggregate contributions were made, the amount of the excess aggregate contributions attributable to the Plan for the Plan Year and any income allocable to such contributions (through a date that is no more than seven (7) days before the excess aggregate contributions are distributed) shall be distributed or, if the excess aggregate contributions are forfeitable, forfeited. As to any Highly Compensated Employee, any distribution or forfeiture of his allocable portion of the excess aggregate contributions for a Plan Year shall first be attributed to any nondeductible employee contributions made by the Participant during the Plan Year for which no corresponding Plan Sponsor contribution is made and then to any remaining nondeductible employee contributions made by the Participant during the Plan Year and any Matching Contributions thereon. As between the Plan and any other plan or plans maintained by the Plan Sponsor in which excess aggregate contributions for a Plan Year are held, each such plan shall distribute or forfeit a pro-rata share of each class of contribution based on the respective amounts of a class of contribution made to each plan during the Plan Year. The payment of the excess aggregate contributions shall be made without regard to any other provision in the Plan.

For purposes of this Section 4, with respect to any Plan Year, “excess aggregate contributions” means the excess of:

(a) the aggregate amount of the Matching Contributions and nondeductible employee contributions and, if taken into account under Section 3 of this Appendix, the Deferral Amounts actually made on behalf of Highly Compensated Eligible Participants for the Plan Year, over

(b) the maximum amount of the contributions permitted under the limitations of Section 3 of this Appendix, determined by reducing contributions made on behalf of Highly Compensated Eligible Participants in order of the contribution percentages beginning with the highest of such percentages.

Distribution or forfeiture of nondeductible employee contributions or Matching Contributions in the amount of the excess aggregate contributions for any Plan Year shall be made with respect to Highly Compensated Employees on the basis of the dollar amount of contributions by, or on behalf of, each such Highly Compensated Employee. Forfeitures of excess aggregate contributions may not be allocated to Participants whose contributions are reduced under this Section 4.

The determination of the amount of excess aggregate contributions under this Section 4 shall be made after first determining the excess Elective Deferrals under Section 3.1(b) of the Plan.

## SECTION 5

If a Highly Compensated Eligible Participant is a participant in any other plan of the Plan Sponsor or any Affiliate which includes matching contributions, deferrals under a cash or deferred arrangement pursuant to Code Section 401(k), or nondeductible employee contributions, any contributions made by or on behalf of the Participant to the other plan that would be taken into account for the Plan Year shall be allocated with the same class of contributions under the Plan for purposes of determining the “contribution percentage” under the Plan. However, contributions that are made under plans as to which aggregation is prohibited under Treasury Regulations Sections 1.401(k)-1(b)(4) (determined without regard to Treasury Regulations Sections 1.401(k)-1(b)(4)(iii)(B) and 1.410(b)-7(d)(5)) or 1.401(m)-1(b)(4) (determined without regard to Treasury Regulations Sections 1.401(m)-1(b)(4)(iii)(B) and 1.410(b)-7(d)(5)) shall not be combined.

If the Plan and any other plans which include matching contributions, deferrals under a cash or deferred arrangement pursuant to Code Section 401(k), or nondeductible employee contributions are considered as one plan for purposes of Code Sections 401(a)(4) and 410(b)(1), any contributions under the other plans shall be allocated with the same class of contributions under the Plan for purposes of determining the “contribution percentage” under the Plan. However, contributions that are made under plans as to which aggregation is prohibited under Treasury Regulations Sections 1.401(k)-1(b)(4) or 1.401(m)-1(b)(4) shall not be combined.

## **APPENDIX B**

### **LIMITATION ON ALLOCATIONS**

#### **SECTION 1**

Except to the extent permitted under Section 3.1(c) of the Plan, the “annual addition” for any Participant for any one limitation year may not exceed:

- (a) \$53,000 (for 2015), as adjusted for increases in the cost-of-living under Section 415(d) of the Code; or
- (b) 100% of the Participant’s Annual Compensation for the limitation year.

The compensation limit referred to in Subsection (b) of this Section shall not apply to any contribution for medical benefits after separation from service (within the meaning of Section 401(h) of the Code or Section 419(f)(2) of the Code) which is otherwise treated as an annual addition.

#### **SECTION 2**

For the purposes of this Appendix, the term “annual addition” for any Participant means for any limitation year, the sum of certain Plan Sponsor and Participant contributions and forfeitures to the Plan, contributions to any individual medical account (as defined in Section 415(l)(2) or 419A(d) of the Code) which is part of the Plan, and other amounts as determined in Code Section 415(c)(2) in effect for that limitation year.

#### **SECTION 3**

For purposes of this Appendix, the term “limitation year” shall mean a Plan Year unless a Plan Sponsor elects, by adoption of a written resolution, to use any other twelve-month period adopted in accordance with regulations issued by the Secretary of the Treasury. For purposes of applying the limitations set forth in this Appendix, the term “Plan Sponsor” shall mean a Plan Sponsor and any other corporations which are Participants of the same controlled group of corporations (as described in Section 414(b) of the Code, as modified by Code Section 415(h)) as is a Plan Sponsor, any other trades or businesses (whether or not incorporated) under common control (as described in Code Section 414(c), as modified by Code Section 415(h)) with a Plan Sponsor, any other corporations, partnerships, or other organizations which are Participants of an affiliated service group (as described in Section 414(m) of the Code) with a Plan Sponsor, and any other entity required to be aggregated with a Plan Sponsor pursuant to regulations under Code Section 414(o).

#### SECTION 4

For purposes of applying the limitations of this Appendix, all defined contribution plans maintained or deemed to be maintained by a Plan Sponsor shall be treated as one defined contribution plan. If the Plan Sponsor maintains more than one defined contribution plan and the limitations of this Appendix would otherwise be exceeded with respect to both the Plan and the other defined contribution plans, this Appendix shall be applied first to reduce allocations of contributions to this Plan.

#### SECTION 5

If the annual addition allocated to the Account of a Participant exceeds the limitations set forth in Section 1 of this Appendix, such excess annual addition shall be corrected in accordance with the Employee Plans Compliance Resolution System.

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